

## DEPARTMENT OF ENERGY ORGANIZATION ACT

[Public Law 95–91, Approved Aug. 4, 1977, 91 Stat 567]

[As Amended Through P.L. 116–260, Enacted December 27, 2020]

【Currency: This publication is a compilation of the text of Public Law 95–91. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Department of Energy Organization Act”.*

【42 U.S.C. 7101 note】

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## DEFINITIONS

SEC. 2. (a) As used in this Act, unless otherwise provided or indicated by the context, the term the “Department” means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this Act (1) reference to “function” includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to “perform”, when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this Act, “Federal lease” means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

【42 U.S.C. 7101】

## TITLE I—DECLARATION OF FINDINGS AND PURPOSES

## FINDINGS

SEC. 101. The Congress of the United States finds that—

(1) the United States faces an increasing shortage of non-renewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

[42 U.S.C. 7111]

#### PURPOSES

SEC. 102. The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this Act:

(1) To establish a Department of Energy in the executive branch.

(2) To achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.

(3) To provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages.

(4) To create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program.

(5) To carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies.

(6) To place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources.

(7) To continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department.

(8) To facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve.

(9) To promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost.

(10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.

(11) To provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs.

(12) To foster and assure competition among parties engaged in the supply of energy and fuels.

(13) To assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety.

(14) To assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this Act.

(15) To provide for, encourage, and assist public participation in the development and enforcement of national energy programs.

(16) To create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.

(17) To foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.

(18) To provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act.

(19) To ensure that the Department can continue current support of mathematics, science, and engineering education programs by using the personnel, facilities, equipment, and resources of its laboratories and by working with State and local education agencies, institutions of higher education, and business and industry. The Department's involvement in mathematics, science, and engineering education should be consistent with its main mission and should be coordinated with all Federal efforts in mathematics, science, and engineering education, especially with the Department of Education and the National Science Foundation (which have the primary Federal responsibility for mathematics, science, and engineering education).

[42 U.S.C. 7112]

#### RELATIONSHIP WITH STATES

SEC. 103. Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this Act shall affect the authority of any State over matters exclusively within its jurisdiction.

[42 U.S.C. 7113]

### TITLE II—ESTABLISHMENT OF THE DEPARTMENT

#### ESTABLISHMENT

SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary.

[42 U.S.C. 7131]

#### PRINCIPAL OFFICERS

SEC. 202. (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b)(1) There shall be in the Department an Under Secretary for Science, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(3) The Under Secretary for Science shall be appointed from among persons who—

(A) have extensive background in scientific or engineering fields; and

(B) are well qualified to manage the civilian research and development programs of the Department.

(4) The Under Secretary for Science shall—

(A) serve as the Science and Technology Advisor to the Secretary;

(B) monitor the research and development programs of the Department in order to advise the Secretary with respect to any undesirable duplication or gaps in the programs;

(C) advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department;

(D) advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(E) advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department;

(F) advise the Secretary with respect to long-term planning, coordination, and development of a strategic framework for Department research and development activities; and

(G) carry out such additional duties assigned to the Under Secretary by the Secretary relating to basic and applied research, including supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act, as the Secretary considers advantageous.

(c)(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—

(A) have extensive background in national security, organizational management, and appropriate technical fields; and

(B) are well qualified to manage the nuclear weapons, non-proliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.

(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 3212 of the National Nuclear Security Administration Act. In carrying out the functions of the Administrator, the Under Secretary shall be sub-

ject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.

(d)(1) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe, consistent with this section.

(2) The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(e)(1) There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe.

(2) The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

[42 U.S.C. 7132]

#### ASSISTANT SECRETARIES

SEC. 203. (a) There shall be in the Department 8 Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

- (A) solar energy resources;
- (B) geothermal energy resources;
- (C) recycling energy resources;
- (D) the fuel cycle for fossil energy resources; and
- (E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out



the international energy purposes described in section 102 of this Act.

[(5) Repealed P.L. 106-65, §3294(b), Oct. 5, 1999, 113 Stat. 970.]

(6) Intergovernmental policies and relations including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph, except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all avail-

able information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

[42 U.S.C. 7133]

#### FEDERAL ENERGY REGULATORY COMMISSION

SEC. 204. There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

[42 U.S.C. 7134]

#### ENERGY INFORMATION ADMINISTRATION

SEC. 205. (a)(1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of en-

ergy information (as defined in section 11 of the Energy Supply and Environmental Coordination Act of 1974) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974, and the provisions of sections 53(d) and 59 thereof shall be applicable to the Administrator in the performance of any function under this Act.

(d) The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55 of part B of the Federal Energy Administration Act of 1974.

(f) The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5, United States Code. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, shall continue to apply to any information obtained by the Administrator under such provisions.

(h)(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following the date of enactment of this Act the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analysis or evaluations as the Administrator finds is necessary to achieve the purposes of this Act.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this Act, is consistent with such accounting practices where applicable.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this Act.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a)<sup>1</sup> of section 657 of this Act.

(6) As used in this subsection the term—

(A) “energy-producing company” means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

<sup>1</sup> So in original. Section 657 of this Act was enacted without a subsection (a).

- (iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;
  - (v) storage of mineral fuels or nonmineral energy resources;
  - (vi) the generation, transmission, or storage of electrical energy;
  - (vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or
  - (viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;
- (B) “energy industry” means all energy-producing companies; and
- (C) “person” has the meaning as set forth in section 11 of the Energy Supply and Environmental Coordination Act of 1974.
- (7) The provisions of section 1905 of title 18, United States Code, shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.
- (i)(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every four years and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—
- (A) quantity of fuels consumed;
  - (B) energy expenditures;
  - (C) fuel switching capabilities; and
  - (D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.
- (2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).
- (j)(1) The Administrator shall annually collect and publish the results of a survey of electricity production from domestic renewable energy resources, including production in kilowatt hours, total installed capacity, capacity factor, and any other measure of production efficiency. Such results shall distinguish between various renewable energy resources.
- (2) In carrying out this subsection, the Administrator shall—
- (A) utilize, to the maximum extent practicable and consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and
  - (B) otherwise take into account the reporting burdens of energy information by small businesses.
- (3) As used in this subsection, the term “renewable energy resources” includes energy derived from solar thermal, geothermal, biomass, wind, and photovoltaic resources.
- (k) Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a(a)), the Administrator shall—

(1) conduct surveys of residential and commercial energy use at least once every 3 years<sup>2</sup>, and make such information available to the public;

(2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-side management programs being operated, the quantity of measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and

(3) in carrying out this subsection, take into account reporting burdens and the protection of proprietary information as required by law.

(l) In order to improve the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs, the Administrator shall, in carrying out the data collection provisions of subsections (i) and (k), consider—

(1) expanding the survey instruments to include questions regarding participation in Government and utility conservation programs;

(2) expanding fuel-use surveys in order to provide greater detail on energy use by user subgroups; and

(3) expanding the scope of data collection on energy efficiency and load-management programs, including the effects of building construction practices such as those designed to obtain peak load shifting.

(m) RENEWABLE FUELS SURVEY.—(1) In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information both on a national and regional basis, including each of the following:

(A) The quantity of renewable fuels produced.

(B) The quantity of renewable fuels blended.

(C) The quantity of renewable fuels imported.

(D) The quantity of renewable fuels demanded.

(E) Market price data.

(F) Such other analyses or evaluations as the Administrator finds are necessary to achieve the purposes of this section.

(2) The Administrator shall also collect or estimate information both on a national and regional basis, pursuant to subparagraphs (A) through (F) of paragraph (1), for the 5 years prior to implementation of this subsection.

(3) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

【42 U.S.C. 7135】

<sup>2</sup>Section 315(2) of division D of Public Law 113–76 provides for an amendment to strike “once every three years” and insert “once every four years”. The amendment could not be carried out because it should have been made to strike “3 years” (numerical) instead of “three years”.

## ECONOMIC REGULATORY ADMINISTRATION

SEC. 206. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of title IV, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

[42 U.S.C. 7136]

## COMPTROLLER GENERAL FUNCTIONS

SEC. 207. The functions of the Comptroller General of the United States under section 12 of the Federal Energy Administration Act of 1974 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this Act or any other Act administered by the Department.

[42 U.S.C. 7137]

[Section 208 repealed by Public Law 100-504.]

## OFFICE OF SCIENCE

SEC. 209. (a) There shall be within the Department an Office of Science to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) It shall be the duty and responsibility of the Director—

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary.

(c) MISSION.—The mission of the Office of Science shall be the delivery of scientific discoveries, capabilities, and major scientific tools to transform the understanding of nature and to advance the energy, economic, and national security of the United States.

[42 U.S.C. 7139]

#### LEASING LIAISON COMMITTEE

SEC. 210. There is hereby established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

[42 U.S.C. 7140]

#### OFFICE OF MINORITY ECONOMIC IMPACT

SEC. 211. (a) There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

(c) The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

(3) determines how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

(d) The Director may provide the management any<sup>3</sup> technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying

<sup>3</sup> So in original. Probably should be “and”.



out his functions under this section, the Director may enter into contracts, in accordance with section 646 of this Act and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;

(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

(e)(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

(f) As used in this section, the term—

(1) “minority” means any individual who is a citizen of the United States and who is Asian American, Native Hawaiian, a Pacific Islander, African American, Hispanic, Puerto Rican, Native American, or an Alaska Native;

(2) “minority business enterprise” means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and

(3) “minority educational institution” means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

(g) There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed \$3,000,000 for fiscal year 1979, not to exceed \$5,000,000 for fiscal year 1980, and not to exceed \$6,000,000 for fiscal year 1981. Of the amounts so ap-

appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e).

[42 U.S.C. 7141]

[Sec. 212 Repealed P.L. 106–65, § 3294(d)(1), Oct. 5, 1999, 113 Stat. 970.]

[42 U.S.C. 7143]

#### ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY ADMINISTRATION

SEC. 213. (a) The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.

(b) The Secretary may direct officials of the Department who are not within the National Nuclear Security Administration to review the programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs and activities, including consistency with other similar programs and activities of the Department.

(c) The Secretary shall have adequate staff to support the Secretary in carrying out the Secretary's responsibilities under this section.

[42 U.S.C. 7144]

#### ESTABLISHMENT OF SECURITY, COUNTERINTELLIGENCE, AND INTELLIGENCE POLICIES

SEC. 214. The Secretary shall be responsible for developing and promulgating the security, counterintelligence, and intelligence policies of the Department. The Secretary may use the immediate staff of the Secretary to assist in developing and promulgating those policies.

[42 U.S.C. 7144a]

#### OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE

SEC. 215. (a) DEFINITIONS.—In this section, the terms “intelligence community” and “National Intelligence Program” have the meanings given such terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(b) IN GENERAL.—There is in the Department an Office of Intelligence and Counterintelligence. Such office shall be under the National Intelligence Program.

(c) DIRECTOR.—(1) The head of the Office shall be the Director of the Office of Intelligence and Counterintelligence, who shall be an employee in the Senior Executive Service, the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select an individual to serve as the Director from among individuals who have substantial expertise in matters relating to the intelligence community, including foreign intelligence and counterintelligence.

(d) DUTIES.—(1) Subject to the authority, direction, and control of the Secretary, the Director shall perform such duties and exercise such powers as the Secretary may prescribe.

(2) The Director shall be responsible for establishing policy for intelligence and counterintelligence programs and activities at the Department.

[42 U.S.C. 7144b]

[Section 216 of the Department of Energy Organization Act was repealed by section 6421(b) of division E of Public Law 116-92.]

#### OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

SEC. 217. (a) ESTABLISHMENT.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the “Office”). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) DUTIES OF DIRECTOR.—The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

(1) promote Indian tribal energy development, efficiency, and use;

(2) reduce or stabilize energy costs;

(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.

[42 U.S.C. 7144e]

### TITLE III—TRANSFERS OF FUNCTIONS

#### GENERAL TRANSFERS

SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in title IV, there are hereby transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 402(a)(2) to the extent the Secretary determines such power to be

necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

【42 U.S.C. 7151】

#### TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

SEC. 302. (a)(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

- (A) the Southeastern Power Administration;
- (B) the Southwestern Power Administration;
- (C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act;
- (D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and
- (E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration, shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(d) There are hereby transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

- (1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

【42 U.S.C. 7152】

#### ADMINISTRATION OF LEASING TRANSFERS

SEC. 303. (a) The Secretary of the Interior shall retain any authorities not transferred under section 302(b) of this Act and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 302(b) of this Act with respect to the issuance or supervision of Federal leases. Nothing in section 302(b) of this Act shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) In exercising the authority under section 302(b) of this Act to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

(d) The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

【42 U.S.C. 7153】

#### TRANSFERS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 304. (a) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976, to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act, shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development

opment pursuant to section 509 of the Housing and Urban Development Act of 1970.

[42 U.S.C. 7154]

COORDINATION WITH THE DEPARTMENT OF TRANSPORTATION

SEC. 305. [Amends Section 502 of the Motor Vehicle Information and Cost Savings Act.]

TRANSFER FROM THE INTERSTATE COMMERCE COMMISSION

SEC. 306. Except as provided in title IV, there are hereby transferred to the Secretary such functions set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.

[42 U.S.C. 7155]

TRANSFERS FROM THE DEPARTMENT OF THE NAVY

SEC. 307. There are hereby transferred to and vested in the Secretary all functions vested by chapter 869 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

[42 U.S.C. 7156]

TRANSFERS FROM THE DEPARTMENT OF COMMERCE

SEC. 308. There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

[42 U.S.C. 7157]

## NAVAL REACTOR AND MILITARY APPLICATION PROGRAMS

SEC. 309. The Division of Naval Reactors established pursuant to section 25 of the Atomic Energy Act of 1954, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Under Secretary for Nuclear Security, and such organizational unit shall be deemed to be an organizational unit established by this Act.

[42 U.S.C. 7158]

## TRANSFER TO THE DEPARTMENT OF TRANSPORTATION

SEC. 310. Notwithstanding section 301(a), there are hereby transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 381(b)(1)(B) of the Energy Policy and Conservation Act.

[42 U.S.C. 7159]

## TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

## APPOINTMENT AND ADMINISTRATION

SEC. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b)(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after the date of enactment of the Federal Energy Regulatory Commission Member Term Act of 1990 shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall ex-

pire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.



(h) The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this Act or as otherwise authorized by law.

(j) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) as assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(k) ADDRESSING INSUFFICIENT COMPENSATION OF EMPLOYEES AND OTHER PERSONNEL OF THE COMMISSION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, if the Chairman of the Commission publicly certifies that compensation for a category of employees or other personnel of the Commission is insufficient to retain or attract employees and other personnel to allow the Commission to carry out the functions of the Commission in a timely, efficient, and effective manner, the Chairman may fix the compensation for the category of employees or other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, or any other civil service law.

(2) CERTIFICATION REQUIREMENTS.—A certification issued under paragraph (1) shall—

(A) apply with respect to a category of employees or other personnel responsible for conducting work of a scientific, technological, engineering, or mathematical nature;

(B) specify a maximum amount of reasonable compensation for the category of employees or other personnel;

(C) be valid for a 5-year period beginning on the date on which the certification is issued;

(D) be no broader than necessary to achieve the objective of retaining or attracting employees and other personnel to allow the Commission to carry out the functions of the Commission in a timely, efficient, and effective manner; and

(E) include an explanation for why the other approaches available to the Chairman for retaining and attracting employees and other personnel are inadequate.

(3) RENEWAL.—

(A) IN GENERAL.—Not later than 90 days before the date of expiration of a certification issued under paragraph (1), the Chairman shall determine whether the certification should be renewed for a subsequent 5-year period.

(B) REQUIREMENT.—If the Chairman determines that a certification should be renewed under subparagraph (A), the Chairman may renew the certification, subject to the certification requirements under paragraph (2) that were applicable to the initial certification.

(4) NEW HIRES.—

(A) IN GENERAL.—An employee or other personnel that is a member of a category of employees or other personnel that would have been covered by a certification issued under paragraph (1), but was hired during a period in which the certification has expired and has not been renewed under paragraph (3) shall not be eligible for compensation at the level that would have applied to the employee or other personnel if the certification had been in effect on the date on which the employee or other personnel was hired.

(B) COMPENSATION OF NEW HIRES ON RENEWAL.—On renewal of a certification under paragraph (3), the Chairman may fix the compensation of the employees or other personnel described in subparagraph (A) at the level established for the category of employees or other personnel in the certification.

(5) RETENTION OF LEVEL OF FIXED COMPENSATION.—A category of employees or other personnel, the compensation of which was fixed by the Chairman in accordance with paragraph (1), may, at the discretion of the Chairman, have the level of fixed compensation for the category of employees or other personnel retained, regardless of whether a certification described under that paragraph is in effect with respect to the compensation of the category of employees or other personnel.

(6) CONSULTATION REQUIRED.—The Chairman shall consult with the Director of the Office of Personnel Management in implementing this subsection, including in the determination of the amount of compensation with respect to each category of employees or other personnel.

(7) EXPERTS AND CONSULTANTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Chairman may—

(i) obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code;

(ii) compensate those experts and consultants for each day (including travel time) at rates not in excess of the rate of pay for level IV of the Executive Schedule under section 5315 of that title; and

(iii) pay to the experts and consultants serving away from the homes or regular places of business of the experts and consultants travel expenses and per diem in lieu of subsistence at rates authorized by sec-

tions 5702 and 5703 of that title for persons in Government service employed intermittently.

(B) LIMITATIONS.—The Chairman shall—

(i) to the maximum extent practicable, limit the use of experts and consultants pursuant to subparagraph (A); and

(ii) ensure that the employment contract of each expert and consultant employed pursuant to subparagraph (A) is subject to renewal not less frequently than annually.

【42 U.S.C. 7171】

#### JURISDICTION OF THE COMMISSION

SEC. 402. (a)(1) There are hereby transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act;

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act, and the interconnection, under section 202(b), of such Act, of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act;

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act;

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act and Natural Gas Act.

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act.

(b) There are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.

(c)(1) Pursuant to the procedures specified in section 404 and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 4(a) of the Emergency Petroleum Allocation Act of 1973 which is required by section 8 or 12 of such Act to be transmitted by the President to, and reviewed by, each House of Congress, under section 551 of the Energy Policy and Conservation Act.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 8 or 12 of the Emergency Petroleum Allocation Act of 1973, and section 551 of the Energy Policy and Conservation Act.

(d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act.

(f) No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404, shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect

to any function under the jurisdiction of the Commission pursuant to section 402.

【42 U.S.C. 7172】

#### INITIATION OF RULEMAKING PROCEEDINGS BEFORE COMMISSION

SEC. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act, the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

【42 U.S.C. 7173】

#### REFERRAL OF OTHER RULEMAKING PROCEEDINGS TO COMMISSION

SEC. 404. (a) Except as provided in section 403, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 301 or 306 of this Act, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 402 (a)(1), (b), and (c)(1), the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

- (1) concur in adoption of the rule or statement as proposed by the Secretary;
- (2) concur in adoption of the rule or statement only with such changes as it may recommend; or
- (3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5, United States Code.

[42 U.S.C. 7174]

#### RIGHT OF SECRETARY TO INTERVENE IN COMMISSION PROCEEDINGS

SEC. 405. The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

[42 U.S.C. 7175]

#### REORGANIZATION

SEC. 406. For the purposes of chapter 9 of title 5, United States Code, the Commission shall be deemed to be an independent regulatory agency.

[42 U.S.C. 7176]

#### ACCESS TO INFORMATION

SEC. 407. (a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this Act.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 304 and section 311 of the Federal Power Act and section 10 and section 11 of the Natural Gas Act, shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be fur-

nished by the Secretary to the Federal Energy Regulatory Commission.

【42 U.S.C. 7177】

## TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

### PROCEDURES

SEC. 501. (a)(1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this title shall apply to the Commission to the same extent this title applies to the Secretary in the exercise of any of the Commission's functions under section 402 (c)(1) or which the Secretary has assigned under section 402(e).

(b)(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If, the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

(c) The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are

waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(d)(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term “unit of local government” means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term “geographic area within a State” means a special purpose district or other region recognized for governmental purpose within such State is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(e) Where authorized by any law vested, transferred, or delegated pursuant to this Act, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

[42 U.S.C. 7191]

#### JUDICIAL REVIEW

SEC. 502. (a) Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

(b) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce



any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Subject to the provisions of section 401(i) of this Act, and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28, United States Code. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

【42 U.S.C. 7192】

#### REMEDIAL ORDERS

SEC. 503. (a) If upon investigation the Secretary or his authorized representatives believes that a person has violated any regulation, rule, or order described in section 501(a) promulgated pursuant to the Emergency Petroleum Allocation Act of 1973, he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section “person” includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

(c) If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commis-

sion shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

(e) Nothing in this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

(f) The provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after the effective date of this Act.

(g) With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

[42 U.S.C. 7193]

#### REQUESTS FOR ADJUSTMENTS

SEC. 504. (a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 501(a) issued under the Federal Energy Administration Act, the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environmental Coordination Act of 1974, or the Energy Policy and Conservation Act, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) such person may request a review of such denial by the Commission and may

obtain judicial review in accordance with this title when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

【42 U.S.C. 7194】

#### REVIEW AND EFFECT

SEC. 505. Within one year after the effective date of this Act, the Secretary shall submit a report to Congress concerning the actions taken to implement section 501. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

【42 U.S.C. 7195】

### TITLE VI—ADMINISTRATIVE PROVISIONS

【Part A (sections 601-603) repealed by P.L. 104–106.】

#### PART B—PERSONNEL PROVISIONS

##### OFFICERS AND EMPLOYEES

SEC. 621. (a) In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b)(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after the effective date of this Act, to fill such position under paragraph (1) leaves such position or

(B) on the day which is four years after such effective date, whichever is later.

(c)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS-16, GS-17, and GS-18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections<sup>4</sup> 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments under GS-16, GS-17, and GS-18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this Act and who immediately before the effective date of this Act, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) In addition to the number of positions which may be placed at GS-16, GS-17, and GS-18 under section 5108 of title 5, United States Code, under existing law, or under this Act and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(e) For the purposes of determining the maximum aggregate number of positions which may be placed at GS-16, GS-17, or GS-18 under section 5108(a) of title 5, United States Code, 63 percent of the positions established under subsections (b) and (c) shall be deemed GS-16 positions, 25 percent of such positions shall be deemed GS-17 positions, and 12 percent of such positions shall be deemed GS-18.

(f) All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of the date of enactment of this Act shall, while employed in such positions, be exempt from the competitive service.

[42 U.S.C. 7231]

#### SENIOR POSITIONS

SEC. 622. In addition to those positions created by title II of this Act, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5, United States Code, who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

<sup>4</sup> So in original. Should be "section."

【42 U.S.C. 7232】

#### EXPERTS AND CONSULTANTS

SEC. 623. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for persons in Government service employed intermittently.

【42 U.S.C. 7233】

#### ADVISORY COMMITTEES

SEC. 624. The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

【42 U.S.C. 7234】

#### ARMED SERVICES PERSONNEL

SEC. 625. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on the date of enactment of this Act, in the Energy Research and Development Administration and under chapter 869 of title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

【42 U.S.C. 7235】

### PART C—GENERAL ADMINISTRATIVE PROVISIONS

#### GENERAL AUTHORITY

SEC. 641. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

【42 U.S.C. 7251】

#### DELEGATION

SEC. 642. Except as otherwise expressly prohibited by law, and except as otherwise provided in this Act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

【42 U.S.C. 7252】

#### REORGANIZATION

SEC. 643. (a) Subject to subsection (b), the Secretary<sup>5</sup> is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions vested by this Act in any organizational unit or component.

(b) The authority of the Secretary to establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the National Nuclear Security Administration is governed by the provisions of section 3219 of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65).

(c) The authority of the Secretary under subsection (a) does not apply to the National Nuclear Security Administration. The corresponding authority that applies to the Administration is set forth in section 3212(e) of the National Nuclear Security Administration Act.

【42 U.S.C. 7253】

#### RULES

SEC. 644. The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

【42 U.S.C. 7254】

#### SUBPENNA

SEC. 645. For the purpose of carrying out the provisions of this Act, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 9 of the Federal Trade Commission Act with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this Act. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the

<sup>5</sup>Section 3159(b)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (H.R. 5408 as introduced in the 106th Congress and enacted by section 1 of Public Law 106–398; 114 Stat. 1654A–469) attempted to amend subsection (a) by striking “The Secretary” and inserting “(a) Except as provided in subsection (b), the Secretary”. The amendment could not be executed due to an earlier amendment by section 314(b)(1) of Public Law 106–377 (114 Stat. 1441A–79).

Commission shall have the same powers and authority as the Secretary has under this section.

[42 U.S.C. 7255]

#### CONTRACTS

SEC. 646. (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

(1) is located at a facility of the Department of Energy to be closed or reconfigured;

(2) at the time the lease is entered into, is not needed by the Department of Energy; and

(3) is under the control of the Department of Energy.

(d)(1) A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e)(1) Before entering into a lease under subsection (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c), the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate

State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

(g)(1) In addition to authority granted to the Secretary under any other provision of law, the Secretary may exercise the same authority to enter into transactions (other than contracts, cooperative agreements, and grants), subject to the same terms and conditions as the Secretary of Defense under section 2371 of title 10, United States Code (other than subsections (b) and (f) of that section).

(2) In applying section 2371 of title 10, United States Code, to the Secretary under paragraph (1)—

(A) the term “basic” shall be replaced by the term “research”;

(B) the term “applied” shall be replaced by the term “development”; and

(C) the terms “advanced research projects” and “advanced research” shall be replaced by the term “demonstration projects”.

(3) The authority of the Secretary under paragraph (1) shall not be subject to—

(A) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); or

(B) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

(4)(A) The Secretary shall use such competitive, merit-based selection procedures in entering into transactions under paragraph (1), as the Secretary determines in writing to be practicable.

(B) A transaction under paragraph (1) shall relate to a research, development, or demonstration project only if the Secretary determines in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

(5) The Secretary may protect from disclosure, for up to 5 years after the date on which the information is developed, any information developed pursuant to a transaction under paragraph (1) that would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.

(6)(A) Not later than 90 days after the date of enactment of this subsection, the Secretary shall issue guidelines for transactions under paragraph (1).



(B) The guidelines shall be published in the Federal Register for public comment in accordance with rulemaking procedures of the Department.

(C) The Secretary shall not have authority to carry out transactions under paragraph (1) until the guidelines for transactions required under subparagraph (A) are final.

(7) The annual report of the head of an executive agency under section 2371(h) of title 10, United States Code, shall be submitted to Congress.

(8)(A) In this paragraph, the term “nontraditional Government contractor” has the meaning given the term “nontraditional defense contractor” in section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) Not later than 1 year after the date on which the final guidelines are published under paragraph (6), the Comptroller General of the United States shall submit to Congress a report describing—

(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

(ii) whether additional safeguards are necessary to carry out the authorities.

(9) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate.

(10) Notwithstanding any other provision of law, the authority to enter into transactions under paragraph (1) shall terminate on September 30, 2030.

【42 U.S.C. 7256】

#### ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 647. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

【42 U.S.C. 7257】

#### FACILITIES CONSTRUCTION

SEC. 648. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

- (1) Emergency medical services and supplies;
- (2) Food and other subsistence supplies;
- (3) Messing facilities;

(4) Audio-visual equipment, accessories, and supplies for recreation and training;

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) Living and working quarters and facilities; and

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

[42 U.S.C. 7258]

#### USE OF FACILITIES

SEC. 649. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in 3(e) of the Federal Property and Administrative Services Act of 1949.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, of facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise

established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

【42 U.S.C. 7259】

#### FIELD OFFICES

SEC. 650. The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

【42 U.S.C. 7260】

#### COPYRIGHTS

SEC. 651. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

- (1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;
- (2) licenses under copyrights, patents, and applications for patents; and
- (3) releases, before suit is brought, for past infringement of patents or copyrights.

【SEC. 652. Repealed by section 502 of P.L. 104–206 (110 Stat. 3002).】

#### CAPITAL FUND

SEC. 653. The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, li-

abilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

【42 U.S.C. 7263】

#### SEAL OF DEPARTMENT

SEC. 654. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

【42 U.S.C. 7264】

#### REGIONAL ENERGY ADVISORY BOARDS

SEC. 655. (a) The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Each Board established pursuant to subsection (a) may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) If any Regional Advisory Board makes specific recommendations pursuant to subsection (c), the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

【42 U.S.C. 7265】

#### DESIGNATION OF CONSERVATION OFFICERS

SEC. 656. The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of En-

ergy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

[42 U.S.C. 7266]

#### ANNUAL REPORT

SEC. 657. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 365(c) of the Energy Policy and Conservation Act, section 304(c) of the Nuclear Waste Policy Act of 1982, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include:

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities.

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency;

and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State and local governments and nongovernmental entities to achieve the purposes of this Act;

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

[42 U.S.C. 7267]

#### LEASING REPORT

SEC. 658. The Secretary of the Interior shall submit to the Congress not later than one year after the date of enactment of this Act, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

[42 U.S.C. 7268]

#### TRANSFER OF FUNDS

SEC. 659. The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

[42 U.S.C. 7269]

## AUTHORIZATION OF APPROPRIATIONS

SEC. 660. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.

【42 U.S.C. 7270】

## GUARDS FOR STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 661. Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

- (1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and
- (2) arrest without warrant any person for an offense against the United States—

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

- (i) has committed or is committing a felony; and
- (ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

【42 U.S.C. 7270a】

## TRESPASS ON STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 662. (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than \$5,000, imprisonment for not more than one year, or both.

【42 U.S.C. 7270b】

## ANNUAL ASSESSMENT AND REPORT ON VULNERABILITY OF FACILITIES TO TERRORIST ATTACK

SEC. 663. (a) The Secretary shall, on an annual basis, conduct a comprehensive assessment of the vulnerability of Department facilities to terrorist attack.

(b) Not later than January 31 each year, the Secretary shall submit to Congress a report on the assessment conducted under subsection (a) during the preceding year. Each report shall include the results of the assessment covered by such report, together with such findings and recommendations as the Secretary considers appropriate.

[42 U.S.C. 7270c]

#### TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

##### TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedure Act of 1950, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function<sup>6</sup> transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on the effective date of this Act, shall be subject to the provisions of section 703 of this Act.

[42 U.S.C. 7291]

##### EFFECT ON PERSONNEL

SEC. 702. (a) Except as otherwise provided in this Act, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

<sup>6</sup>So in original. Should be “functions.”



(b) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred twenty days from the effective date of this Act or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

【42 U.S.C. 7292】

#### AGENCY TERMINATIONS

SEC. 703. Except as otherwise provided in this Act, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate.

【42 U.S.C. 7293】

#### INCIDENTAL TRANSFERS

SEC. 704. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

【42 U.S.C. 7294】

#### SAVINGS PROVISIONS

SEC. 705. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or

agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

■42 U.S.C. 7295■

## SEPARABILITY

SEC. 706. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

[42 U.S.C. 7296]

## REFERENCE

SEC. 707. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions.

[42 U.S.C. 7297]

## PRESIDENTIAL AUTHORITY

SEC. 708. Except as provided in title IV, nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

[42 U.S.C. 7298]

## [AMENDMENTS]

[Section 709 amends the Federal Energy Administration Act of 1974, the Energy Reorganization Act of 1974, the Atomic Energy Act of 1954, the Housing and Urban Development Act of 1970, the Energy Conservation Standards for New Buildings Act of 1976, the Rural Electrification Act of 1936, and title 3, United States Code.]

## [ADMINISTRATIVE AMENDMENTS]

[Section 710 amends title 5, United States Code]

## TRANSITION

SEC. 711. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

[42 U.S.C. 7299]

## CIVIL SERVICE COMMISSION REPORT

SEC. 712. The Civil Service Commission shall, as soon as practicable but not later than one year after the effective date of this Act, prepare and transmit to the Congress a report on the effects

on employees of the reorganization under this Act, which shall include—

- (1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;
- (2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this Act;
- (3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;
- (4) an estimate of the personnel costs associated with such reorganization;
- (5) the effects of such reorganization on labor management relations; and
- (6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

[42 U.S.C. 7300]

#### ENVIRONMENTAL IMPACT STATEMENTS

SEC. 713. The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.

[42 U.S.C. 7301]

### TITLE VIII—ENERGY PLANNING

#### NATIONAL ENERGY POLICY PLAN

SEC. 801. (a) The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this title referred to as a “proposed Plan”) as provided in subsection (b);

(2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United

States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

【42 U.S.C. 7321】

## CONGRESSIONAL REVIEW

SEC. 802. (a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

[42 U.S.C. 7322]

## TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

## EFFECTIVE DATE

SEC. 901. The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 705(b)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

[42 U.S.C. 7341]

## INTERIM APPOINTMENTS

SEC. 902. In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

[42 U.S.C. 7342]

## TITLE X—SUNSET PROVISIONS

## SUBMISSION OF COMPREHENSIVE REVIEW

SEC. 1001. Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and

House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 660, for such programs for the fiscal year beginning October 1, 1982.

[42 U.S.C. 7351]

#### CONTENTS OF REVIEW

SEC. 1002. Each comprehensive review prepared for submission under section 1001 shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

【42 U.S.C. 7352】